

STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of Barring L.E.A.D.E.R. Institute from Participation in the Milwaukee Parental Choice Program in the 2005-06 School Year</p>	<p style="text-align:center">FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER</p>
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INTRODUCTION

This matter is before the department after a Notice of Intent to Participate in the Milwaukee Parental Choice Program (MPCP, the program), § 119.23 Wis. Stats., Wis. Admn. Code PI 35, for the 2005-06 school year, was filed by L.E.A.D.E.R. Institute (the school) with the Wisconsin Department of Public Instruction (DPI), administrator of the program. An issue has arisen as to compliance with law and administrative rule by the school as a condition for participation in the program. Accordingly the following findings of fact, conclusion of law and order are set forth.

FINDINGS OF FACTS

1. The school timely filed a Notice of Intent to Participate in the program.
2. On March 30, 2004, after enactment, the legislature published 2003 Act 155 amending the program statute, § 119.23 Stats., and required schools participating in the MPCP to show evidence of sound fiscal practices (§ 119.23(7) (am)2.) and evidence of financial viability (§ 119.23(7) (d)2.). Under Wis. Admin. Code PI 35.02(8m) “financially viable” is defined as “the ability of the private school to pay for goods and services, make debt service payments, and pay other obligations as they become due.”
3. Under Wis. Admin. Code PI 35.048, the DPI must consider the following as indicators that the school may not have the financial ability to continue and may not be meeting the requirement of Wis. Stats. 119.23(7)(am) 2. or (d) 2.: (a) failure to make payments as required by PI 35.047(3) as identified in the report required by PI 35.047(13); and (b) failure to make filings with or withholdings payments to the federal internal revenue service as required by PI 35.047(6)(a), to the Wisconsin department of revenue as

required in PI 35.047(6)(b), or to the Wisconsin department of workforce development as required by PI 35.047(6)(c) as identified in the report required by PI 35.047(13).

4. Under Wis. Admin. Code PI 35.05(10), the state superintendent must review the information provided under PI 35.048 and determine whether a school is not financially viable. The DPI may not permit a school determined not financially viable to participate in the program until the school: (a) provides acceptable information that it is financially viable; and (b) the school's administrator has participated in fiscal management training approved by the DPI. In addition, the state superintendent may require the school to immediately provide a surety bond, payable to the state of Wisconsin, in the amount of 25% of the total current fiscal year payment amount.

5. On November 30, 2005, the department issued an order withholding the school's November 2005 MPCP payments because the school failed to return 45 checks (totaling \$69,067.14) for students that did not meet the enrollment and attendance requirements of PI 35.04(7)(a). Appeal rights were included with the order indicating the school had 30 days to challenge the order. The school did not challenge the order within the 30 days.

6. On December 14, 2005, the department issued an order requiring the school to repay \$59,430 in summer school payments that the school claimed for which it was ineligible to receive before the department would release any MPCP payments. The school operates a year-round program; and therefore, is not entitled to MPCP summer school funding. Appeal rights were included with the order indicating the school had 30 days to challenge the order. The school did not challenge the order within the 30 days.

7. On December 15, 2005, the school's auditor submitted the required fiscal and internal control practices report for the school. The report indicated that the school did not fully comply with: (a) expense payment requirements [PI 35.047(3)]; (b) government agency filing requirements [PI 35.047(6)]; (c) liability insurance requirements [PI 35.047(7)]; and (d) the fidelity bond requirement [PI 35.047(11)].

See Exhibit 1, attached and incorporated.

8. Specifically, the auditor indicated “many invoices were not found and most were also not paid.”

The auditor examined 10 vendor payments totaling \$15,858 and determined that, of these, 9 payments totaling \$13,858 payments were not made timely. This represents 90% of the school’s invoices and 87% of the amounts due not being timely paid. In addition, the auditor noted that the school, “with its current financial problems, has been unable to make any sort of tax payments in regards to payroll. Management stated that they have no money to pay the taxes with.” It was also noted that the school does not have all the proper insurance coverage and that some coverage has lapsed because of nonpayment. In addition, the auditor noted that a fidelity bond was not found and that management was aware that it needed a fidelity bond. The school’s response to most of these findings was that upon receipt of the MPCP funding the school would become compliant.

9. On January 10, 2006, the school faxed a spreadsheet listing “bills that need to be paid” and a payroll spreadsheet. These spreadsheets indicate that the school owes over \$242,000 to a number of businesses and government agencies including the Department of Workforce Development and the Internal Revenue Service. In addition, the payroll spreadsheet indicates that the school owes over \$126,900 for payroll payments starting from October 15, 2005 through December 31, 2005. **See Exhibit 2, attached and incorporated.**

10. Based on the 3rd Friday in September 2005 pupil enrollment audit, the school’s auditor indicates that 145 students (143 FTE) were present at the school on the 3rd Friday in September 2005. Based on this number of FTE students, the maximum payment eligibility for the school for the first half of the current school year would be \$454,097. This amount may be reduced upon review by the department. The school has received September payments totaling \$206,408 leaving a maximum potential remaining payment eligibility of \$247,689 for the first half of the current school year. **See Exhibit 3, attached and incorporated.**

11. Based on the information provided to the department, the school owes the following: (a) \$69,067 for improperly cashed student checks; (b) \$59,430 for improperly claimed summer school payments; (c)

\$242,349 to various vendors and government agencies; and (d) \$126,976 for past payroll payments.

These amounts total to \$497,822 in past due liabilities.

12. Based on the information provided to the department, the school's identified past due liabilities exceed the maximum potential remaining payment eligibility for the first half of the current school year by \$250,133.

13. The school's 2004-05 audited financial information report shows total liabilities of \$281,841 as of June 30, 2005 and only \$24,269 of assets and no cash. **Exhibit 4, attached and incorporated.**

14. The school has shown many indicators that it is not financially viable and has not instituted appropriate sound fiscal practices. Under Wis. Admin. Code PI 35.047, a school must make timely payments to vendors and be current with filing and withholding payment requirements of the federal internal revenue service and department of workforce development. A review of the information provided by the school and its auditor demonstrates the school has not yet implemented sound fiscal practices to ensure its financial viability.

CONCLUSION OF LAW

1. Under Wis. Admin. PI 35.05(10)(b),(c) and (d), the state superintendent must notify a school of a determination that it is not financially viable, and may require that the school provide acceptable information that it is financially viable, and may require the school's administrator participate in fiscal management training approved by the Department of Public Instruction before allowing the school to participate in program. In addition, the state superintendent may require the school to immediately provide a surety bond, payable to the state of Wisconsin, for 25% of the total current year payments. This bond must remain in force until the department is provided with financial statements prepared in accordance with generally accepted accounting principles that do not contain a qualified audit opinion or doubt as to the school's ability to continue.

2. Based on the Findings of Facts, the state superintendent has determined that the school is not financially viable and is not eligible to participate in the program until the school provides acceptable

information that it is financially viable and the school's administrator has participated in fiscal management training approved by the DPI. In addition, the school must provide a surety bond, payable to the state of Wisconsin, for 25% of the total current year payments, which shall remain in force until the department is provided with financial statements prepared in accordance with generally accepted accounting principles that do not contain a qualified audit opinion or doubt as to the school's ability to continue.

ORDER

The state superintendent has determined that the school is not financially viable under Wis. Admin. PI 35.05(10).

NOW THEREFORE IT IS ORDERED THAT the school is barred from participating in the program until the school provides acceptable information that it is financially viable and the school's administrator has participated in fiscal management training approved by the Department of Public Instruction. In addition, the school must provide a surety bond, payable to the state of Wisconsin, for 25% of the total current year payments (\$227,048.25) which shall remain in force until the department is provided with financial statements prepared in accordance with generally accepted accounting principles that do not contain a qualified audit opinion or an expression of the auditor's doubt as to the school's ability to continue.

Dated this 27th day of January, 2006.

/S/

Anthony S. Evers,
Deputy State Superintendent

Appeal Rights

You have a right to challenge this decision in court. Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to Wis. Stats §§ 227.52 and 227.53, you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the State Superintendent of Public Instruction as the respondent.

You may have a right to a contested case hearing conducted by the Department if you meet the requirements of § 227.42(1). To request a contested case hearing, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing upon and naming the State Superintendent of Public Instruction as the respondent. The filing of the request for a contested case does not extend the 30-day period for filing a petition for judicial review. All requests for contested case hearings must be made in accordance with the requirements of § 227.42(1) and allege as follows:

- a. The substantial interest of the petitioner who is injured in fact or threatened with injury by Department action or inaction (you must describe the injury):
- b. That there is no evidence of legislative intent that this interest is not to be protected:
- c. That the injury to the petitioner is different in kind or degree from the injury to the general public caused by the Department action or inaction: and
- d. That there is a dispute of material fact (you must specify the disputed fact, that is you must identify something the department states is true as a matter of fact but which you dispute).

The party petitioner to such an action is L.E.A.D.E.R. Institute. This notice is provided pursuant to § 227.48(2)

STATE OF WISCONSIN
DEPARTMENT OF PUBLIC INSTRUCTION